

EPC-0006-1D2

REMARKS

Claims 1 - 10 are pending in the present Application. Claim 1 has been cancelled, Claims 2, 3, 5 - 7, and 9 have been amended, and Claims 11 - 13 have been added, leaving Claims 2, 13 for consideration upon entry of the present Amendment.

Claims 3, 7, and 9, have been amended to place these claims in independent form and for clarity.

Claims 2, 5, and 6, have merely been amended to change their dependencies.

Claim 11 has been added to further identify the pallet. Support for this claim can at least be found in Paragraph [0093].

Claims 12 and 13 have been added to further identify the pallet. Support for these claims can at least be found in Paragraph [0045].

No new matter has been introduced by these amendments and new claims. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Information Disclosure Statement

Applicants note that the Examiner has not considered the art submitted in the Information Disclosure Statement filed on December 5, 2003, Page 2 of 12. Applicants respectfully request that the art submitted in this Information Disclosure Statement be considered and a fully initialed PTO Form A820 be returned to the Applicants.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1, 2, 5 and 6 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 3,835,792 to Wharton. Applicants respectfully traverse this rejection. Claim 1 has been cancelled and Claims 2, 5, and 6 depend from Claim 9, thereby rendering this rejection moot. Reconsideration and withdrawal of this rejection are respectfully requested.

EPC-0006-D2

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 9 and 10 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 3,835,792 to Wharton. Applicants respectfully traverse this rejection.

The Office Action alleges that

the only difference being the specific weight per area percentage. However, the use of different degrees of weight per unit area percentages are matters of desirability and choice of material used, and would have been well within the level of ordinary skill in the art...

(Office Action, page 3) Applicants respectfully disagree with this assessment.

As is explained in the background of the present specification, several problems exist with wooden pallets. Although plastic pallets resolve many of these problems, the weight of the plastic pallet has remained a problem. In order to enable the plastic pallet to meet the load bearing capability of the wooden pallet, pallet weight requirements are exceeded.

Claims 9 and 10 claim pallets that meet specific weight limitations, while Claims 11 and 12 specify guidelines and protocols also met by the claimed pallet. There is not teaching or suggestion that the pallet of Wharton meets any of these claim limitations and they are not inherent (i.e., necessarily present in the pallet of Wharton). Attaining a pallet with the claimed limitations was not "well within the level of ordinary skill".

A prima facie case of obviousness requires that all elements of the invention are disclosed in the prior art; that the prior art relied upon contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art had a reasonable expectation of success. *In re Pine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

There is no teaching or suggestion in the prior art of record that meets the claim limitations. Applicants have filled the long felt need that they have discussed throughout the application. Applicants teach and claim a unique plastic pallet design that meets certain weight criteria. The claimed pallet is non-obvious. No motivation or expectation of success on how to modify the prior art to attain the claimed patent has been provided. Hence, no *prima facie* case of obviousness has been established. Reconsideration and withdrawal of this rejection are respectfully requested.

BPC-0006-D2

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 3,835,792 to Wharton, and further in view of U.S. Patent No. 3,685,463 to Francis. Applicants respectfully traverse this rejection.

Claim 3 is directed to a pallet comprising an upper deck, a lower deck, and a foot member. The foot member comprises a first foot half disposed on said upper deck and a second foot half disposed on said lower deck. The first foot half having a pin disposed thereon. The second foot half has a hole disposed therein for receiving the pin, wherein said hole is defined by a wider opening on one end and a narrower opening on an opposing end to define a keyhole shape.

As is acknowledged in the Office Action, Wharton teaches a plastic pallet but fails to teach a second foot half having a hole defined by a keyhole shape. Therefore, Francis is relied upon to teach a keyhole slot and pin structure. (Office Action, page 3)

As noted above, a *prima facie* case of obviousness requires that all elements of the invention are disclosed in the prior art; that the prior art relied upon contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art had a reasonable expectation of success. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Here it is alleged that the modification of Wharton would be obvious in view of Francis. However, Francis does not teach first and second foot elements that connect. Francis has a single foot element (legs 20) and three panel members (16, 17, 18). Francis does teach a foot member with a keyhole shaped hole. Hence, Francis fails to remedy the deficiencies of Wharton.

If Francis is merely relied upon to teach the hole shape, there is not teaching, suggestion, or motivation in Wharton or Francis to combine these references as suggested in the Office Action. In other words, there is no motivation to change the design of the foot members of Wharton, no motivation to pick a deck hole shape of Francis to modify a foot hole shape of Wharton, and further no motivation to chose the keyhole shape of Wharton over the oval shape of Francis. Additionally, there is also no explanation or suggestion on how such a redesign

BPC-0006-D2

should be completed. For example there is no explanation of how to assembly the pallet of Wharton if so modified.

Obviousness is not based upon what an artisan *could* do (e.g., that the artisan could redesign the pallet of Wharton), but what an artisan *would* be motivated to do with an expectation of success. Here, there is no motivation to redesign a foot of Wharton with a hole shape in a deck of Francis. An artisan *would not* be motivated to make such a modification merely because some deck holes in Francis have a keyhole shape and some have an oval shape. No *prima facie* case of obviousness has been established. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 3,835,792 to Wharton, and further in view of U.S. Patent No. 4,050,664 to Daley. Applicants respectfully traverse this rejection.

Claims 7 and 8 are directed to a pallet comprising an upper deck, a lower deck and a foot member. The foot member comprises halves that comprise foam.

Since it is admitted that Wharton fails to teach foot halves comprising foam, Daley is relied upon to teach "the use of providing foam [is] old." (Office Action, page 4)

Daley is directed to supports (2) having a strapping member (10) that attaches to the support and around an object (1). (See Figures 1 and 2) The support (2) further comprises foam portions (4) and (6) disposed in the support (2). (Col. 2, lines 27 – 33; and Figure 2)

Based upon the use of foam in the support of Daley, it is alleged that to modify the structure of Wharton to include foam inserts would be obvious. (Office Action, page 4)

As noted above, obviousness is based upon what an artisan would be motivated to do, with an expectation of success, from the teachings of the art at the time of the present invention. Here, there is no motivation for Wharton to attach foam to the corrugations 98, 110, 102, or around the rib work 118. (See Figure 3) Wharton illustrate and describe a particular pallet design. There is no motivation to modify that design by the introduction of foam. Furthermore, since Daley is a single support (e.g., no feet), even if Wharton were to modify the pallet to include foam based upon Francis, there is no teaching or suggestion where to locate the foam.

BPC-0006-D2

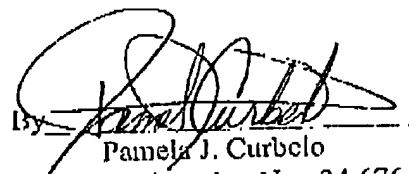
It does not matter if an artisan could try to modify the pallet of Wharton. It is only significant if an artisan would be motivated to modify the pallet of Wharton, with an expectation of success, and that the motivated modification would result in the presently claimed pallet. Here, there is no teaching, suggestion, or motivation to modify Wharton to include foam in the foot halves as is taught and claimed in the present application. There is also no teaching or suggestion as to where to locate the foam if it is added to Wharton, e.g., in the numerous ribs, corrugations, or elsewhere. Hence, no *prima facie* case of obviousness has been established. Reconsideration and withdrawal of this rejection are respectfully requested.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the rejections and allowance of the case are respectfully requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

CANTOR COLBURN LLP

By 
Pamela J. Curbelo
Registration No. 34,676

Date: March 8, 2006
CANTOR COLBURN LLP
55 Griffin Road South
Bloomfield, CT 06002
Telephone (860) 286-2929
Facsimile (860) 286-0115
Customer No.: 23413